Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR N18
HON. Scott A. Steiner

Date: May 08, 2024

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Non-Appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (Lewis v. Fletcher Jones Motor Cars, Inc. (2012) 205 Cal.App.4th 436, 442, fn. 1.)

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All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at Civil Remote Hearings | Superior Court of California | County of Orange (occourts.org) before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at Civil Remote Hearings | Superior Court of California | County of Orange (occourts.org) The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at Civil Remote Hearings | Superior Court of California | County of Orange (occourts.org) Those procedures and guidelines will be strictly enforced.

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#	Case Name	Tentative
1.	2022-1270219 Hernandez vs. City of Tustin	**Motion to Compel Mental Examination** Defendant City of Tustin ("City") seeks an order compelling Plaintiff Maria Hernandez ("Plaintiff") to submit to a mental examination under Code of Civil Procedure section 2032.310. As an initial matter, the Court notes City's proofs of service for City's moving papers and reply do not include the server's email address. (Code Civ. Proc., § 1013b, subd. (b)(1).) Plaintiff served and filed a timely opposition without objecting to service. Subject to co-defendants' objections regarding service of these papers, the Court exercises its discretion to consider City's papers. Although Plaintiff represents she will appear at her mental examination, City and Plaintiff have not agreed on the following: 1) Who may attend the examination; 2) The duration of the examination; 3) The tests to be performed; and 4) What parts of the examination may be recorded.

		The parties dispute whether all the tests listed in City's motion and Dr. Ho's declaration are necessary. Dr. Ho lists several tests without discussing what the tests study or show. (Ho Decl., ¶ 7e.) Plaintiff contends that some of the tests are to test for cognitive function, which is not at issue in this case. Without additional information regarding the purpose of the tests set forth in Dr. Ho's declaration, it is unclear whether all the tests are necessary and whether good cause has been shown for each test. Accordingly, the hearing on this motion is continued to June 26, 2024, at 10:00 AM in Department N18. No later than May 31, 2024, the parties may submit evidence to discuss the purpose of each test Dr. Ho intends to perform and why each test should be allowed. City shall give notice.
2.	2023-1360932 South Coast Villas Homeowners Association vs. Zimnitskaya	Demurrer to Answer is off calendar. Amended Answer filed on 04/25/2024.
3.	2023-1305275 United Auto Credit Corporation vs. Chris Motors Auto Sales, Inc.	Plaintiff United Auto Credit Corporation moves for summary judgment/adjudication against Defendants Chris Motors Auto Sales, Inc., and Christopher Jackson. The proof of service (ROA 43) indicates that the moving papers were e-served on 2/19/24. The sender's email address was not included on the proof of service. This is required per Code Civ. Proc., § 1013b(b)(1), which states that proof of electronic service shall include "[t]he electronic service address and the residence of business address of the person making the electronic service." No opposition was filed that would confirm Defendants were served. In addition, e-service is generally not authorized on pro per litigants. Self-represented parties must *affirmatively consent* to electronic service by serving and filing a notice so stating. (CRC, Rule 2.251(c)(3)(B).) There is no indication that Defendants have done so. CRC, Rule 2.251(i), "When service is complete," states:

		(1) Electronic service of a document is complete as provided in Code of Civil Procedure section 1010.6 and the rules in this chapter. Service was not made per the rules in this chapter; thus, essentially it is not complete. The Court declines to grant the motion, absent a showing of proper service.
4.	2022-1275741 Greencorn vs. Ayres Hotel Anaheim	Defendant Ayres Hotel Company, Inc's demurrer to plaintiff Joshua Greencorn's suit is overruled in party and sustained in part. Specifically, the special demurrers for uncertainty are overruled and the general demurrer to fourth cause of action for fraudulent concealment is overruled. The demurrer is otherwise sustained as described below with 15 days leave to amend. Defendants' motion to strike is denied in part and granted in part. The motion is moot as to paragraphs 56 and 86. It is denied as to paragraph 120 and granted with 15 days leave to amend as to paragraph 73. **Demurrer** A demurrer can be used only to challenge defects that appear within the "four corners" of the pleading – which includes the pleading, any exhibits attached, and matters of which the court is permitted to take judicial notice. *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4th 968, 994. Limited to the "four corners" as such, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. *Leek v. Cooper* (2011) 194 Cal. App. 4th 399, 413. On demurrer, a complaint must be liberally construed. Code Civ. Proc. § 452; *Stevens v. Superior Court* (1999) 75 Cal. App. 4th 594, 601. All material facts properly pleaded, and reasonable inferences, must be accepted as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal. 4th 962, 966-67. ***Uncertainty*** A demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading but is directed at the uncertainty existing in the allegations made. *People v. Lim* (1941) 18 Cal. 2d 872, 883. "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." *Khoury v. Maly's of California, Inc.*

(1993) 14 Cal. App. 4th 612, 616. Errors and confusion created by "the inept pleader" are to be forgiven if the pleading contains sufficient facts entitling plaintiff to relief. *Saunders v. Cariss* (1990) 224 Cal. App. 3d 905, 908. **A party attacking a pleading on "uncertainty" grounds must specify how and why the pleading is uncertain, and where that uncertainty can be found in the challenged pleading**. *Fenton v. Groveland Community Services Dept.* (1982) 135 Cal.App.3d 797, 809 (disapproved on other grounds in *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300).

Further, uncertainty is a disfavored ground on a demurrer. *See*, Rutter, *Civil Procedure Before Trial*, Section 7:85. A demurrer for uncertainty will only be sustained where the complaint is so poorly pled that a defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. *See*, *Khoury v. Maly's of California, Inc.* (1993) 14 Cal. App. 4th 612, 616.

For its uncertainty demurrer to Plaintiff's nuisance causes of action (fifth and sixth), Defendant simply asserts that, "Plaintiff's First Amended Complaint is uncertain regarding whether he is alleging a private or public nuisance." [Demurrer MPA at 11:3-4.]

This is not enough, especially since Plaintiff sets out two different causes of action – one for private nuisance and one for public nuisance. Accordingly, the demurrer for uncertainty is overruled.

Causes of Action

First Cause of Action – Battery

The elements of civil battery are: (1) defendant intentionally performed an act that resulted in a harmful or offensive contact with the plaintiff's person; (2) plaintiff did not consent to the contact; and (3) the harmful or offensive contact caused injury, damage, loss or harm to plaintiff. *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 526–527.

While it is true that "battery generally is not limited to direct body-to-body contact" and may be shown where one "throws a substance, such as water, upon the other..." (*Mount Vernon Fire Ins. Co. v. Busby* (2013) 219 Cal.App.4th 876, 881), it remains the case that "[b]attery is an intentional tort." *Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1498.

		Here, the FAC alleges Defendants caused an offensive contact with Plaintiff by: (1) choosing not to eradicate a bed bug infestation; (2) choosing not to inspect Plaintiff's room to ensure it was free of bed bugs; (3) choosing not to inspect the bed skirts in Plaintiff's room; (4) disregarding an infestation that was either known or should have been known from prior infestations in Plaintiff's room; and (5) choosing not to notify Plaintiff of the presence of bed bugs in the hotel and Plaintiff's room. The FAC thereafter concludes the above acts were performed "with the intent to cause a harmful or offensive contact with the body of Plaintiff. While the FAC alleges Defendants had knowledge of a bedbug infestation in the hotel and, specifically, Plaintiff's room the above allegations largely sound in *negligence*. Notably, the FAC does not allege Defendants *placed* the bedbugs into Plaintiff's room, with the intent that she be bitten. Instead, Plaintiff relies solely on Defendants' alleged failure to take affirmative action to *prevent* Plaintiff from being bitten; however, persuasive authority indicates that battery claims stemming from an *omission* fail as a matter of law. *Price v. County of San Diego* (S.D. Cal. 1998) 990 F.Supp.1230, 1244. Plaintiff cites *Mathias v. Accor Economy Lodging, Inc.* (7th Cir. 2003) 347 F.3d 672, nonbinding federal authority issuing from the 7th Circuit; however, this authority is non-availing to Plaintiff. Although Mathias was a bed bug case, it was a negligence action and a post-judgment appeal of a punitive damages award, and therefore not informative on the issue of whether a battery cause of action is properly pled. Furthermore, Plaintiff relies on a portion of Mathias that is dicta. The evidence in Mathias showed that the defendant was aware of a bed bug infestation for years, reaching, as the 7th Circuit described, "farcical proportions" where it continued to rent rooms it knew had bed bugs, including the one rented to the plaintiffs. *Mathias, supra*, 347 F.3d at p. 675. Plaintiff quotes a portion of the opinion in which the court noted that the defendant's "failure either to warn guests or to take effective measures to eliminate the bedbugs amounted to fraud and probably to battery as well." *Id.* at p. 675. However, neither fraud nor battery causes of action were litigated in *Mathias*, making the 7th Circuit's observation dicta. *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1158 ("Dicta consists of observations and statements unnecessary to the appellate court's resolution of the case".)

		Plaintiff also relies on a passage in *Ornelas v. Randolph* (1993) 4 Cal.4th 1095, in which the court stated that a real property owner "owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give recreational users warning of hazards on the property, unless: (1) the landowner willfully or maliciously fails to guard or warn against a dangerous condition, use, structure or activity; (2) permission to enter for a recreational purpose is granted for a consideration; or (3) the landowner expressly invites rather than merely permits the user to come upon the premises." *Id.* at 1099-1100. Plaintiff's reliance on *Ornelas* is also misplaced. *Ornelas* was a negligence action and an appeal of a summary judgment ruling. The California Supreme Court considered the applicability of *Civil Code §846*, which provides limited liability for private landowners for injuries sustained by another from recreational use of the land. The demurrer to this cause of action is sustained. ***Third Cause of Action – IIED*** "[T]o state a cause of action for intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard for causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1259. "Conduct, to be 'outrageous' must be so extreme as to exceed all bounds of that usually tolerated in a civilized society." *Id.* Additionally, "the defendant's conduct must be 'intended to inflict injury or engaged in with the realization that injury will result.'" *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051. "In order to avoid a demurrer, the plaintiff must allege with 'great[] specificity' the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160-161. Here, Defendants demur to the FAC, asserting the allegations amount merely to negligence and do not constitute "outrageous conduct." In response, Plaintiff points to his allegations that Defendant allowed housekeeping to not change out all the

		bedding or inspect for bedbugs and that Defendant did not eradicate a prior bedbug infestation *or* warn Plaintiff. Whether allegations in a complaint rise to the level of extreme and outrageous is a determination that can be made as a matter of law. *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494. ("the appellate courts have affirmed orders which sustained demurrers on the ground that the Defendant's alleged conduct was not sufficiently outrageous."); See also *Trerice v. Blue Cross of California* (1989) 209 Cal.App.3d 878, 883 ("While the outrageousness of a defendant's conduct normally presents an issue of fact to be determined by the trier of fact…the court may determine in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery"). However, "[w]here reasonable men may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability." *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 499. Here, it is unclear whether Plaintiff's allegations regarding Defendant's failure to eradicate a bedbug infestation are sufficiently "outrageous" to support liability; however, it is *possible* that reasonable minds could find the allegation Defendant placed Plaintiff in a hotel room known to have bed bugs, sufficient to constitute extreme behavior which "exceed[s] all bounds of that usually tolerated in a civilized society." *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1259. But Plaintiff has not adequately alleged severe emotional distress. "[T]o state a cause of action for intentional infliction of emotional distress the plaintiff is required to show *severe* emotional distress resulting from *outrageous* conduct on the part of the defendant." *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 231) "[S]evere emotional distress," for purposes of establishing a claim for intentional infliction of emotional distress, means "emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it." (*aylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1246. Under the forgoing authority, allegations that a defendant's conduct caused a plaintiff to suffer a heart attack, was

		sufficient for an IIED cause of action. *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 231-232. Similarly, allegations that a plaintiff suffered depression, anxiety, and physical illness, including vomiting, stomach cramps, and diarrhea, were adequate for an IIED claim. *Hailey v. California Physicians' Service* (2007) 158 Cal.App.4th 452, 476-477 *as modified on denial of reh'g (Jan. 22, 2008)*. In contrast, allegations that a plaintiff lost sleep, had symptoms of anxiety, and suffered from nervousness, but sought no medical treatment, are not adequate to state a claim for IIED. *Girard v. Ball* (1981) 125 Cal.App.3d 772, 787-788. Here, Plaintiff alleges only that he "suffered severe emotional distress that has caused Plaintiff to sustain severe, serious and permanent injuries to his person" and needed to seek medical care for his physical injuries. [FAC, ¶¶ 84-85.] This is facially insufficient. The demurrer to this cause of action is sustained. ***Fourth Cause of Action – Fraudulent Concealment*** The elements of fraud are: "(a) [a] misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; *see also Engalla v. Permanente Medical Grow, Inc.* (1997) 15 Cal.4th 951, 974. Specific to a fraudulent concealment or omission claim, the plaintiff must allege: (1) the defendant concealed a material fact; (2) the defendant had a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed the fact with the intent to defraud the plaintiff; (4) the plaintiff was unaware of the fact and would not have acted as he did if he had known of the concealed fact; and (5) as a result of the concealment of the fact, the plaintiff sustained damage. *Hahn v. Mirda* (2007) 147 Cal. App. 4th 740, 748. There are four circumstances in which concealment/omission may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. *Limandri v. Judkins* (1997) 52 Cal. App. 4th 326, 336-37; CACI 1901.

		"In California, fraud must be pled specifically; general and conclusory allegations do not suffice." *Lazar, supra,* 12 Cal.4th 631, 645, citing *Stansfield v. Starkey* (1990) 220 Cal. App. 3d 59, 74. "This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered." *Id.* In cases against corporate employers, "the plaintiff must 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.'" *Id.*, citing *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal. App. 4th 153, 157. However, as one court noted, "it is harder to apply [the requirement of specificity] to a case of simple nondisclosure. 'How does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?" *Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1199. It is difficult to imagine that hotel management would *not* have a duty to disclose the known existence of bedbugs in a room to a prospective guest. Additionally worth noting, while the Court found no binding authority which deals with this express subject, a U.S. District Court in Florida held that, for purposes of a fraudulent concealment cause of action, a hotel owes a duty to disclose the existence of a known bed bug infestation. *Livingston v. H.I. Family Suites, Inc.* (M.D. Fla 2005) 2005 WL 2077315 at *4. The Court finds that Plaintiff has sufficiently alleged the existence of a duty and knowledge. Reading the allegations of the FAC together, the FAC alleges Defendant was aware, at the time it rented the room to Plaintiff and due to prior complaints, that the room was infested with bedbugs. In ruling on a demurrer, the court "give[s] the complaint a reasonable interpretation, reading it as a whole and its parts in their context." *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38). Additionally, where the complaint provides adequate notice of the material facts allegedly concealed, the claim survives demurrer. *Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1200, [finding allegations sufficiently placed Defendants on notice of the concealed facts and that "[a]lthough sparse, nothing more is required at this early stage of litigation.".

		The demurrer to this cause of action is overruled. ***Fifth Cause of Action – Private Nuisance*** The elements of an action for private nuisance are: (1) interference with use and enjoyment of property; (2) that is substantial, i.e., that causes the plaintiff to suffer "substantial actual damage"; and (3) that is unreasonable. *San Diego Gas & Electric Co. v. Super. Ct.* (1996) 13 Cal.4th 893, 938. "[A] plaintiff bringing a cause of action for private nuisance must show harm to a property interest." *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 402. "[T]o proceed on a private nuisance theory the plaintiff must prove an injury specifically referable to the use and enjoyment of his or her land." *Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262. "First, the plaintiff must prove an interference with his use and enjoyment of his property. (*Ibid.)* Second, 'the invasion of the plaintiff's interest in the use and enjoyment of the land [must be] *substantial*, i.e., that it cause[s] the plaintiff to suffer 'substantial actual damage.' *Ibid.* Third, '[t]he interference with the protected interest must not only be substantial, but it must also be unreasonable' [citation], i.e., it must be 'of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land.'" *Id.* at 262-263. "Although 'any interest sufficient to be dignified as a property right' will support an action based on a private nuisance, and this includes within its purview a tenancy for a term, such right does not inure in favor of a licensee, lodger or employee." *Venuto v. Owens-Corning Fiberglas Corp.* (1971) 22 Cal.App.3d 116, 125. Here, Plaintiff alleges he was a lodger at Defendant's hotel, and he has failed to cite any legal authority giving rise to a right of action for private nuisance by a hotel lodger. Further, Plaintiff seeks only damages, not injunctive relief on his nuisance claim. "'Where negligence and nuisance causes of action rely on the same facts about lack of due care, the nuisance claim is a negligence claim.'" *Avedon v. State*, 186 Cal. App. 4th 1336, 1345 (2010), review denied (Oct. 13, 2010) (quoting *El Escorial Owners' Ass'n v. DLC Plastering, Inc.*, 154 Cal. App. 4th 1337, 1349 (2007) and citing *Melton v. Boustred*, 183 Cal. App. 4th 521, 542 (2010)). Furthermore, a nuisance cause of action pleaded in a complaint not requesting an injunction but seeking only damages renders a nuisance cause of action as a

		negligent cause of action. 2 California Ins. Law Dictionary & Desk Ref. § N41 (2011 ed.) (citing *El Escorial Owners' Ass'n v. DLC Plastering, Inc.*, 154 Cal. App. 4th 1337, 1349 (2007) wherein it is stated, "A cause of action alleging a continuing nuisance is usually accompanied by a request for an injunction.") The demurrer to this cause of action is sustained. ***Sixth Cause of Action – Public Nuisance*** "A nuisance is statutorily defined as anything 'injurious to health' or 'indecent, or offensive to the senses, or an obstruction to the free use of property' that interferes 'with the comfortable enjoyment of life or property....'" *Melton v. Boustred* (2010) 183 Cal.App.4th 521, 542, citing *Civil Code §3479*. "A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.'" *Melton, supra,* 183 Cal.App.4th at 542, citing *Civil Code §3480.* "As the California Supreme Court has explained, 'public nuisances are offenses against, or interferences with, the exercise of rights common to the public.'" *Melton, supra,* 183 Cal.App.4th at 542. "The interference must be both substantial and unreasonable." *Id.*. "A private person may maintain an action for a public nuisance, if it is especially injurious to himself, but not otherwise." Civil Code §3493. To plead a cause of action for public nuisance, Plaintiff must allege the following: (1) that Defendants, by acting or failing to act, created a condition or permitted a condition to exist that was, among other things, either harmful to health; or was indecent or offensive to the senses; or was an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; (2) that the condition affected a substantial number of people at the same time; (3) that an ordinary person would be reasonably annoyed or disturbed by the condition; (4) that the seriousness of the harm outweighs the social utility of Defendants' conduct; (5) that Plaintiff did not consent to Defendants' conduct; (6) that Plaintiff suffered harm that was different from the type of harm suffered by the general public; and (7) that Defendants; conduct was a substantial factor in causing Plaintiff's harm. CACI 2020; see *Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540, 1548.

Plaintiff has not done this.

The demurrer to this cause of action is sustained.

Seventh Cause of Action – Breach of Contract

The elements of a cause of action for breach of contract are: (i) existence of the contract; (ii) Plaintiff's performance or excuse for nonperformance; (iii) Defendant's breach; and (iv) damage to plaintiff resulting therefrom. *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811. "A written contract is usually pleaded by alleging its making and then setting it out verbatim ('in haec verba') in the body of the complaint or as a copy attached and incorporated by reference." 4 Witkin, Cal. Procedure (6th ed. 2024) Pleading, § 526. Alternatively, a plaintiff may plead the legal effect of a contract instead of the precise language. Miles v. Deutsche Bank National Trust Co. (2015) 236 Cal.App.4th 394, 401-402.

Plaintiff alleges that she and Defendant "entered into a written contract for the rent of Plaintiff's room in compliance with California Health & Safety Code at the Subject Hotel." [FAC, ¶ 129.] This is all she alleges as to the terms of the contract.

Plaintiff's breach of contract pleading in the FAC is the same as the original complaint except for Paragraph 133 which alleges damages were caused. The court previously sustained the demurrer on the same factual pleading finding the "Complaint fails to plead facts demonstrating that Defendant breached any specific term of the written contract. (Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811 [elements of breach of contract].)" [ROA #44.]

Accordingly, the demurrer to this cause of action is sustained.

Motion to Strike

A court may strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule or an order of the court. Code Civ. Proc. § 436. "Irrelevant" matters include: allegations not essential to the claim, allegations neither pertinent to nor supported by an otherwise sufficient claim or a demand for judgment requesting relief not support by the allegations of the complaint. Code Civ. Proc. § 431.10(b). A motion to strike can also strike legal conclusions. *Weil & Brown*, Cal. Prac. Guide, *Civil Proc. before Trial*, ¶ 7:179 (2010). Conclusory allegations are permitted, however, if they are supported by other factual

		allegations in the complaint. *Perkins v. Superior Court* (1981) 117 Cal. App. 3d 1, 6. Motions to strike are disfavored. Pleadings are to be construed liberally with a view to substantial justice. Cal. Code Civ. Proc. § 452; *Weil & Brown*, Cal. Prac. Guide, *Civil Proc. before Trial*, ¶ 7:197 (2010). The allegations of the complaint are presumed true; they are read as a whole and in context. *Clauson v. Superior Court* (1998) 67 Cal. App. 4th 1253, 1255. Civil Code § 3294 provides that punitive damages may be awarded in an action for breach of an obligation not arising from contract, if the plaintiff proves by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. "Malice" means conduct that is intended to cause injury or despicable conduct that is carried on with a willful and conscious disregard of the right and safety of others. Civ. Code § 3294(c)(1). At the pleading stage, the complaint must allege facts supporting circumstances of oppression, fraud, or malice. *See Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166 ("The mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. [Citation] Not only must there be circumstances of oppression, fraud or malice, but facts must be alleged in the pleading to support such a claim. [Citation].").]."). A corporate defendant may not be liable for punitive damages based on the acts of its employees unless the plaintiff alleges and proves that an officer, director or managing agent of the corporation: (1) was personally guilty of oppression, fraud or malice; or (2) had advance knowledge of, authorized, or ratified the wrongful conduct for which the damages are awarded. Civ. Code § 3294(b). The same liberal policy regarding amendments that applies to the sustaining of demurrers applies for motions to strike. If a defect may be correctible, leave to amend should usually be given. *Id*. at 168. Defendant has moved to strike punitive damage allegations at paragraphs 56, 73, 86, and 120 of the FAC. Again, the FAC does not have an actual prayer, so there is no separate prayer for punitive damages. Paragraphs 56 and 86 are in in the first and third causes of action for battery and intentional infliction of emotional distress. The motion to strike is moot.

		Paragraph 120 is not a punitive damages allegation. Thus, the motion is denied as to paragraph 120. Finally, paragraph 73 is a punitive damages allegation within Plaintiff's negligence cause of action. In *Taylor v. Superior Court* (1979) 24 Cal. 3d 890, the California Supreme Court ruled that nonintentional torts may form the basis for punitive damages when the conduct constitutes a conscious disregard of the rights or safety of others. *Id.* at 896-96. The plaintiff must establish, however, that the defendant was aware of the probably dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences. *Id.* at 895-96. The Legislature followed with the additional "despicable" requirement for non-intentional malice claims under §3294. *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210 (racing at a high rate of speed did not alone demonstrate malice, particularly where defendant showed some effort to avoid impact.) > As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, 'malice' requires more than a 'willful and conscious' disregard of the plaintiffs' interests. The additional component of 'despicable conduct' must be found." (*College Hospital, supra,* 8 Cal.4th at p. 725, 34 Cal.Rptr.2d 898, 882 P.2d 894.) *Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1161. Plaintiff has alleged the conclusion of collective malice or oppression and ratification by all defendants jointly and ratification but has not alleged facts showing that a particular defendant or person acted despicably in failing to inspect for or eradicate the bedbugs or that Defendant authorized or ratified any such despicable act – as opposed to allowed less than stellar housekeeping practices. The motion to strike is granted as to paragraph 73.
5.	2023-1354879 Witthoeft vs. Lares	The Demurrer by Defendants California Automobile Insurance Company, erroneously sued as Mercury Insurance ("CAIC"), and Patty Lares dba Lares Insurance ("Defendant

		Lares," collectively, "Defendants"), to Plaintiff Karin Witthoeft's ("Plaintiff") Complaint, is sustained in its entirety. Defendants generally and specially demur to the Complaint and all five causes of action alleged therein. <u>1st COA for Breach of (Insurance) Contract</u> "A cause of action for breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach, and damage to plaintiff resulting therefrom." (*Munoz v. MacMillan* (2011) 195 Cal.App.4th 648, 655.) "A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. [Citation.] In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.'" (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 993, citation omitted.) Plaintiff has failed to allege the parties to the agreement, as she has left this section of the form complaint blank, and she has not said who issued the subject policy. Although demurrers for uncertainty are disfavored, they may be sustained where the matters are *dispositive* of a cause of action. If Defendant Lares is not a party to the alleged insurance policy, and is not alleged to be, she has grounds for a general demurrer. If there is an entirely separate agreement between Plaintiff and Defendant Lares, with different obligations, then, based on the way Plaintiff has pled this claim, Defendants cannot tell what they are supposed to respond to. (See *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.) Further, although Plaintiff alleges the various ways in which the defendants breached the contract, she has not alleged anything about the "legal effect," (i.e., the substance of its relevant terms), other than it was a "homeowners insurance policy" for "property damage, etc., coverage related to 1244 W Primrose Drive." Plaintiff has not sufficiently alleged the "legal effect" of the policy that would give rise to her breach allegations against Defendant Lares. Thus, Defendant Lares also has valid grounds for a general demurrer. The demurrer to the breach of contract claim is sustained with leave to amend.

		2nd COA for Breach of Implied Covenant "The law implies in every contract, including insurance policies, a covenant of good faith and fair dealing. 'The implied promise requires each contracting party to refrain from doing anything to injure the right of the other to receive the agreement's benefits.'" (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720.) "It is well-established that a breach of the implied covenant of good faith is a breach of the contract (Citation), and that breach of a specific provision of the contract is not a necessary prerequisite to a claim for breach of the implied covenant of good faith and fair dealing." (*Schwartz v. State Farm Fire and Cas. Co.* (2001) 88 Cal.App.4th 1329, 1339.) As explained, above, Plaintiff has failed to sufficiently allege the existence of an agreement between her and any defendant, and her omission on this matter is subject to a special demurrer because it goes to a dispositive matter. Moreover, if there is no contract between Plaintiff and Defendant Lares, then Defendant Lares cannot be liable for breach of the implied covenant. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 576.) Accordingly, the demurrer to this claim is also sustained with leave to amend. 3rd COA for Conversion The basic elements of a tort claim for conversion are: "(1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and (3) resulting damages." (*Regent Alliance Ltd. v. Rabizadeh* (2014) 231 Cal.App.4th 1177, 1181.) As Defendants correctly point out, "a mere contractual right of payment, without more, will not suffice." (*Farmers Ins. Exchange v. Zerin* (1997) 53 Cal.App.4th 445, 452 [failure to reimburse under insurance policy was not conversion].) Plaintiff's complaint arises solely from a coverage claim. (Compl. at p. 4, § IT-1.) Plaintiff cannot cure the defects in her conversion claim because the very gravamen of her complaint *is* a contractual right to payment, which cannot constitute conversion. Because the complaint shows on its face that it is incapable of amendment, the demurrer to this claim is sustained **without** leave to amend. 4th COA for Negligence Negligence is generally not an available theory of recovery against an insurer. (Croskey et al., Cal. Practice Guide:

		Insurance Litigation (The Rutter Group 2023) at ¶ 11:205, emphasis in original.) Because Plaintiff could potentially state claims for breach of contract and breach of the implied covenant against CAIC, negligence would not be an appropriate theory of recovery in this context and would appear to be barred by the economic loss doctrine. (See *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 915 [applying economic loss doctrine to bar plaintiff's negligence claim against lender, which was governed by mortgage contract].) Thus, the demurrer is sustained **without** leave to amend as to CAIC. With respect to Defendant Lares, the basis of her negligence claim is unclear, as Plaintiff appears to be alleging intentional wrongdoing. The demurrer shall be sustained, but Plaintiff shall be given leave to amend with respect to Defendant Lares. <u>5th COA for Elder Financial Exploitation (Abuse)</u> The Court agrees that Plaintiff's allegations do not support a claim for Elder Financial Abuse under Welfare & Institutions Code section 15610.30. As one federal court explains, "[n]either the language of § 15610.30 nor its accompanying legislative history indicate that a basic denial of insurance coverage was ever contemplated as a form of 'financial elder abuse.'" (*O'Brien v. Continental Casualty Company* (N.D. Cal., Aug. 13, 2013, No. 5:13-CV-01289 EJD) 2013 WL 4396761, at *5.) The demurrer is sustained with leave to amend. Given the ruling on the demurrer, the motion to strike is moot. Plaintiff shall file and serve her amended pleading within **30 days** from the notice of ruling. If Plaintiff needs more time to file her amended pleading, she may appear at the hearing and explain to the court how much more time she requires. Defendants shall give notice of the ruling.
6.	2023-1332593 Madorsky vs. The North River Insurance Company	Plaintiff Simon Madorsky's unopposed motions to compel Defendant Kostandinos Menelaos Saridakis dba KLM Development's responses to his form interrogatories – construction, and form interrogatories – general, are GRANTED. Defendant is ordered to serve verified responses without objections to the foregoing interrogatories, within 20 days. On 9/14/23, Plaintiff served Form Interrogatories – Construction (Set One) and Form Interrogatories – General

		(Set One) upon Defendant Saridakis dba KLM Development. KLM's responses were due on 10/17/23. On 10/16/23, Defendant's counsel requested an extension to 11/1/23, which Plaintiff's counsel granted. However, as of the date of the filing of the motion, Defendant has not served responses to any of the discovery requests. (Landers Decl., ¶¶ 3-7, Exs. 1, 2.) Because Plaintiff demonstrated that the subject interrogatories were served on Defendant, the deadline has passed, and no responses were served, an order compelling responses is appropriate. (See Code Civ. Proc., §§ 2030.290.) The Court imposes monetary sanctions against Defendant Kostandinos Menelaos Saridakis dba KLM Development in the total amount of $1800 ($900 per motion) payable to Plaintiff within 30 days. (See Code Civ. Proc., §§ 2030.290(c), 2023.010.) Plaintiff shall give notice.